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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, A.D. 1972

No. 72-447

ITY OF CHICAGO Respondent v. OHN A. HUTTER, et al., Petitioners	Appeal from the Supreme Court of Illinois

PETITION FOR REHEARING

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Mr. Justice Black, in a television interview, stated that when the Court denies a petition for a writ of Certiorari, it had carefully consider the petition and the denial was in effect a decision.

On this basis, the decision of the Court in this matter was as follows:

1. Any litigant who appeals an order of any State Court where a unit of government is involved does so at his own risk and that State Court may mete out any punishment it may deem appropriate for having done so. This may include fines and imprisonment and the Appellant is to be denied all recourse or justice.

2. Any unit of any State government may bring an action against a resident of that State charging him with the violation of an ordinance or other law and even though that resident may be in compliance with the law, the Courts need not consider that fact and may ignore it in any order or decision including fines and imprisonment.

3. The unit of State government, for example a City, may bring an action against a citizen requiring him to do certain acts according to ordinance. However, neither the City nor the Court need pay any attention to the ordinance but may issue any order it sees fit even though it is contrary to said ordinance.

4. The State Court, under No. 3 above, may deprive any resident of his property as a matter of course with the assurance that no Appellate Court will interfere with its decision. The question of whether this person was deprived of his property without due process is to be ignored. Public officials must not be interfered with in the exercise of their authority. They may run their unit of government as they see fit and no Court nor apparent Constitutional limitation is to apply.

5. It is to be recommended that units of State government bring their actions in Chancery Courts so that they may avoid the annoyance of jury trials, for juries may, through ignorance, decide in favor of the defendant.

6. In matters of murder, rape, etc. custom requires a jury trial, but as suggested in No. 5, jury trials may be

6. In matters of summary type, etc.

avoided in dealing with less sophisticated culprits like property owners.

If the attorney for the State unit of government is peeved and annoyed that the culprit appealed, the Court recommends that the attorney bring an ex parte action for an additional fine when the culprit is unaware, and perhaps out of town. This court will not interfere.

7. If the City or the Court wishes to further teach the culprit (property owner) to always do what he is told, it could tell the culprit that if he does certain work (outside stairway which the City asked for in its complaint) it will permit him to use his property. After he has done the work, the City and the Court can impress the culprit by laughing at him and denying him the use of his property.

8. A midnight raid on the home of the culprit by the City police will be found to be very effective. The Nazi Gestapos used this method to good advantage. (Note how effective the Fred Hampton raid was on the Black Panthers.)

9. Intimidation is usually effective. However, if the culprit is stubborn, it is most effective to secretly have the Court appoint a Receiver for his property. By so doing, you can have the Receiver collect the rents and put them in his own account; harass and threaten the tenants; by keeping the rent and not paying any bills you should be able to bring him to his knees (this was done to petitioners and is now in Appellate Court of Illinois. Hutter will probably present this to this Court before long).

10. Sometimes the property owning culprit, who has spent a lifetime trying to accumulate assets so he can be secure in his old age, is so stubborn, he may require still more severe treatment; the Court therefore recommends that the City secure the cooperation of the assessor and raise his taxes so high that he could not possibly pay them. Hence, when he is totally divested of his property he can no longer be a nuisance to anyone except to those that administer Public Aid. The City is referred to Appeal No. 71-1419 now pending in this Court.

11. By using above methods the City will be able to carry out its intention to eliminate private entrepreneurs, who have in the past provided rental housing. It will be impossible for them to pay the unequal taxes assessed against them and make the unrealistic improvements demanded by the Building Department. Hence, they will have to abandon their property. The Federal government will provide the funds to bulldoze them to rubble. The choicest areas may be sold to friends at bargain prices (this will create good will and campaign contributions). The Federal government will provide the funds for public housing. In this way those that govern this City will have eliminated any obnoxious individuals who believe in private enterprise.

The petitioners would not think of referring to the Honorable Judges of a State Appellate Court as "Madames" which was what a well known New York trial attorney called them in an article in "Time."

While most of State Court Judges might be inclined to render a just decision

in a case where they do not know the parties, they are human and very likely to be biased in favor of those who made their judgeship possible. They had better be if they expect to keep their job or win promotion.

Frank Greenberg, a member of the Illinois Judicial Inquiry Board and past president of the Chicago Bar Association, had this to say in the Chicago Daily News, November 22, 1972.

> To be fair to those who have tilled the barren hillsides of judicial reform in Illinois, it was never really intended that the retention system should be divorced from its partner, merit selection.
>
> The whole idea was that judges would be appointed by the governor from among nominees selected with great care, and after searching examination, by a nonpartisan judicial nominating commission possessed of impeccable credentials. Given that premise and the expectation that only lawyers of exceptional qualifications in terms of education, legal ability, temperament, integrity and character would be elevated to the bench, virtual life tenure was a logical extension of the concept.
>
> The present selection system, though it masquerades in the guise of popular election, is in reality also an appointive one. The difference is that the appointive power is the head of the dominant machine and that his consultative body consists of the ward committeemen and the other politicians who make up the slatemaking organ of the party.
>
> In Cook County the appointive power for many years has been the Honorable Richard J. Daley, but it would make no difference if it were Timothy Sheehan or Edmund Kucharski, or whoever might be in control of the Cook County Republican apparatus. Whichever party is in power, judicial selection is concerned far more with how well a lawyer has served the party than with how well he has serviced his profession.

The Appellate Court in its decision tried to let Hutter down gently when it stated in its opinion: "In our opinion defendant is engaging in futile litigation to his own detriment."

The Appellate Court well knew what little possibility there was that Hutter would receive justice or that the upper courts would protect his Constitutional rights.

The Illinois Supreme Court has well learned its lesson and follows in the wake of this Court by adopting the buck-passing gimmick of requiring the appellant to plead "Leave to Appeal" which of course, is usually denied as is Certiorari in this Court.

Thus all of the State Courts "pass the buck" on Constitutional questions to this Court.

Former President Truman stated the "buck passing" ends with him as indeed it did for there was no way to avoid a definite decision.

Margaret Truman tells of her father's atomic bombing decision where he told her: "I could not worry about what history would say about my personal morality. I made the only decision I ever knew how to make. I did what I thought was right."

In judicial matters, the "buck-passing" stops in this Court, except that here the Court can sidestep a decision in a way the Chief Executive cannot. All it has to do is deny Certiorari and tell the petitioners: "Go away from my door - there is no room in the inn for your Constitutional problem of injustice."

The other day Columnist James J. Kilpatrick wrote an article entitled "Chief Justice Warren Earl Burger - Court efficiency expert."

WASHINGTON — Warren Earl Burger, to judge from his opinions over the last three terms, is not likely ever to rank with Marshall and Warren among the great chief justices of American jurisprudence. Burger's mind has no bent for building landmarks. But it is a fair guess that the determined Minnesotan will achieve something else: He will outrank the rest as a builder of our courts.

It may seem a poor compliment to praise a chief justice in terms of judicial reform. One might as aptly praise a prime minister for laying a nice course of bricks. Yet Burger's accomplishments in court administration merit a round of solid applause.

THE FIRST obligation of a judge is not to be efficient: his first obligation is to be just. But if Burger has his way — and he is getting his way — justice and efficiency will march forward hand in hand.

As Burger has pointed out many times, our nation's courts (and especially the federal courts) have been experiencing an explosive growth in litigation in recent years, largely as a consequence of new laws, changing court decisions, and a veritable revolution in the criminal law. In 1960, some 58,000 civil cases were filed in U.S. district courts. In the last fiscal year,

the number was 96,000. The surge in criminal cases has been equally dramatic. Just under 30,000 criminal cases were brought in 1960; there were 49,000 last year.

BURGER HAD been concerned at these trends long before President Nixon raised him to the Supreme Court in 1969. Using his new position to excellent advantage, he became a roving apostle for judicial reform. He complained incessantly at the law's delays. Often he contrasted the slow and meticulous processes of American trials with the brisk, no-nonsense approach of the British. He urged a new standard of justice — not the perfect trial, but the fair trial.

Largely as a result of Burger's missionary efforts, the creeping movement toward judicial reform decided to get up and trot.

Many other individuals and institutions, of course, contributed to the new momentum. Maryland's former Sen. Joseph Tydings, for one example, pushed through the Federal Magistrates Act of 1968. The American Bar Assn. and other professional bodies have played a major role. Most important, the federal judges themselves, some of them pretty crusty characters, generally have shown a co-operative spirit.

THE RESULTS, if not exactly dramatic, are surely encouraging. Under the Magistrates Act, which became fully effective in July, 1971, a corps of 81 full-time and 400-part-time magistrates last year disposed of more than 237,000 items of U.S. district court business. They tried thousands of minor offenses, conducted pre-trial conferences, handled immigration matters, and screened hundreds of habeas corpus petitions.

This past fiscal year saw a new circuit executive program well launched in seven of the ten appellate divisions. This also was the first year of operation for the Federal Public Defender offices and the Community Defender Organizations. More than half the 94 U.S. district courts continued to experiment with the newly sanctioned six-member juries in civil cases.

Much remains to be done. Here and there the magistrates may have overstepped their authority. Despite significant reductions in trial delays, more than 4,200 criminal cases had been pending on June 30 for more than two years. Criticism continues of the six-member juries.

The Supreme Court itself, swamped in 4,500 petitions a year, sorely requires relief. A new Court of Review, composed of senior circuit judges, will be recommended to Congress by a blue-ribbon study panel. It may be an answer.

THE PROBLEM of "the law's delays" was an old problem long before Hamlet lamented the injustice that is caused thereby. The problem never can be solved completely.

At least in our federal courts, a new energy and purpose can be felt. Burger is proving himself, if not a brilliant jurist, at least a first-rate chairman of the board.

Hutter has made other suggestions to Chief Justice Burger.

The essential requirement in any trial is that it be held before a judge who has had proper training and experience, has high moral principles and is not beholden to anyone for the tenure of his judgeship or promotion. It is probable that a jury trial is the fairest of all.

It is absolutely essential that in the Appellate process, some Court will be fair and unbiased, and have the courage of its convictions to render a just decision in compliance with the Constitution.

It will be easy for this Court to increase its case load from 4,500. The approaching bi-centennial will be helpful. Everyone must be convinced that this Court will protect their rights under the great Constitution which went into effect two hundred years ago. As a complement to this, every unit of State government must remain convinced that this Court will avoid interfering with them if at all possible, especially if demonstrations do not get out of hand.

Thus State units will continue to deny Constitutional rights and the oppressed in greater and greater numbers will come to this Court for the protection of their Constitutional rights. Who knows but that the case load may be increased to 25,000?

Suppose the Court instead desires to reduce the case load? One helpful solution would be to end the population explosion and the influx of outsiders.

Another helpful procedure would hear every case and strictly enforce the Con-

stitution so that it would become evident to all State officials and Courts that they must obey the Constitution or suffer damages and grave consequences. Congress could pass stiff laws to enforce.

Thus the violation of persons Constitutional rights would greatly decrease and hence the need to appeal would be minimized.

One thing is certain that in the long run no law or Constitutional provision can be enforced against the will of the people. I presume some justice, like Hutter, practiced law in the good old days of the 18th Amendment.

What to do about the increased case load in the Federal Courts?

Everyone is desperately seeking justice. They justifiably fear they will not receive the justice they seek in the State Courts so they file where possible, in the Federal Courts. Alas, they often find little justice in the Federal Courts. For example, some time ago Hutter wrote Chief Justice Burger about case No. 67 C 1261. This case has an unbelievable docket, many pages in length. Hutter has reversed Judge Julius J. Hoffman three times and now after some six years it will have to be tried again before another Court. At the trial, only a few pages out of 1,200 pages of transcript were admitted into evidence. Judge Hoffman told Hutter he would be lucky if the defendant paid his carfare home.

The counterpart of this case before Judge Myron Gordon in Milwaukee No. 70 C 290 may have similar results. He has been reversed once and it looks like petty dilatory tactics will string it out for

years to come. After two years Hutter has been unable to get the defendants to answer interrogatories. Justice Burger has mentioned these impossible delays in speeches he has made.

Professor Moore worked hard to provide the rules of Civil procedure which were to simplify pleading and make the complaint a simple outline of what was to be proved at the trial. Nit picking has so increased that a defendant, with the willing cooperation of the Court, can easily find fault with any complaint, have it dismissed, and delay the case for many years.

The purpose of simplicity to speed up a trial has been nullified.

The case before Judge Gordon is a case in point.

When one seeks justice from an intrenched establishment with great influence and clout he really is up against a stone wall.

Almost anyone would settle for Justice Burger's new standard of justice - not a perfect trial, but a fair trial.

Federal Courts avoid acting on Civil rights where State money is involved. They would probably go along with action which involved the rights of women to use mens toilets.

This Court by denying this writ has stated in effect that any City or State unit officials may enforce any ordinance or statute that they may desire; or they may ignore the ordinance and act contrary to it; or they may act as they see fit,

without any law, to harass or destroy any person in their jurisdiction. This Court says they may fine, raid, imprison, confiscate or destroy property as they wish.

With this license, City officials with or without an ordinance could decide that minorities are a nuisance and must submit to sterilization if they wish to remain in the City.

On a national scale, without the theoretical protection of the Constitution, the executive could decide that the time had come to liquidate the non-white minorities, and in line with the new proposed economies, every time a Nuclear device is set off underground it would include a million undesirables to be atomized.

Don't forget Hitler started out with a democratic Weimar Republic and before long everything he did was according to law.

Considering all of the possibilities outlined here perhaps the Court might reconsider and grant the petitioners their Writ of Certiorari.

Respectfully submitted,

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I hereby certify that the foregoing petition for rehearing was filed to secure justice and not for delay.

John A. Hutter